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Supreme Court of the United States.

OCTOBER TERM, 1904.

No. 194.

Office Supreme Court
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THE RIVERDALE COTTON MILLS OF GEORGIA,
Petitioner,

vs.

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY OF ALABAMA,

AND

THE HUGULEY MANUFACTURING COMPANY OF ALABAMA,
Respondents.

BRIEF OF

MARION ERWIN,

For Respondents, in reply.

JOHN T. MORGAN,
JOHN M. CHILTON,
WILLIAM S. THORINGTON,
ROBERT PORTER SHICK,
Of Counsel for Respondents.

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I.

THE POSITIVE AVERMENTS OF THE ANSWER, TAKEN AS TRUE, DESTROY THE JURISDICTIONAL AVERMENTS OF RES JUDICATA MADE IN THE BILL.

Both sides agree that the hearing on the so-called ancillary bill was on bill and answer.

The answer of the Alabama and Georgia Manufacturing Company and of the Huguley Manufacturing Company (the *Alabama* corporations) to the so-called ancillary bill, not only avers their incorporation and organization under the laws of Alabama, and refers to their Alabama charters in the record, but contains these specific averments denying the allegations of the bill that they were parties to the Robinson bill on which the claim of *res judicata* is based:

> "The complainants in said bill are both corporations chartered under the laws of Alabama, *owning property in Alabama*, and advised that they are not concluded or affected by the proceedings heretofore had in this honorable court *since they were not parties thereto.*"
>
> (First Par. of Answer, Rec. p. 505).

> "That said corporations were never parties as corporations under the laws of Alabama to said foreclosure proceedings."
>
> (Ninth Par. of Answer, Rec. p. 508).

We insist that these are distinct, positive allegations of fact, which, for decree on bill and answer, must be taken as *true*, and which eliminate the charge of *res judicata* from

the case, and leaves the so-called ancillary bill without either jurisdiction or equity to support it.

We submit that the attempt made by Mr. Brandeis, to escape the force of the above language by misconstruction, is whimsical. He says, in his reply brief (p. 6), that

> "The allegations that 'said corporations were never parties as corporations under the laws of Alabama to said foreclosure proceedings', is apparently an allegation that they were never sued by that description; on any other construction it states a conclusion of law."

We submit that in an answer to a bill which charges the existence of two Georgia corporations having the same names respectively as the respective Alabama corporations, no more appropriate language could be used than was there used to express the fact that the Alabama corporations were never parties to said Robinson suit. It is precisely the form of expression used by Mr. Justice Gray, delivering the opinion of the Supreme Court of the United States in Louisville, etc., R. R. Co., *v.* Louisville Trust Co., to express the same idea and distinction relative to dual corporate existence and separate entities and rights under the same corporate name. The language used was:

> "The Louisville, New Albany and Chicago Railway Company is a party to this suit *as a corporation of Indiana* only and *not as a corporation of Kentucky*. It could not, either as a corporation of both states, or as a corporation of Kentucky only, have brought this suit against corporations and citizens of Kentucky, in the Circuit Court of the United States for the district of Kentucky, without ousting the jurisdiction of the court. * * * It necessarily follows that the rights and liabilities, if any, that it may have *as a corporation* of Kentucky or as

a corporation of Illinois, cannot be adjudicated in this case."

Louisville, etc., Ry. Co., *v.* Trust Co., 174 U. S. 576.

Notwithstanding the positive averments, twice made in the answer to the Alabama corporations, that they had never been parties to the Robinson bill, and notwithstanding that in his "Statements of Facts" in his principle brief (p. 5), as to what constituted the "substance" of said answer, Mr. Brandeis said:

> "The *respondents insisted* that the two Alabama corporations, plaintiffs in the suit in Alabama, *were not parties* to the foreclosure suit."

Yet, in his printed argument (p. 63), the following totally fallacious statement is made:

> "*There is no dispute* as to the identity of the corporation (Huguley Manufacturing Company) now before the court, with the corporation of the same name which was a party to the foreclosure suit."

And thereupon he quotes the language of the fifth paragraph of the answer, and, referring to it, says:

> "This contains a clear statement that the corporation represented in said former litigation and the corporation of the same name in this litigation are one and the same. * * * As the Huguley Company existed only as a corporation of Alabama, and as the Huguley Company was a party to the foreclosure suit, it follows that the corporation now before the court is the corporation a party to the foreclosure suit."

We submit that this attempt to make the answer admit *arguendo* what it denies positively is not permissible on a hearing on bill and answer. The fallacy in the deduction is easily pointed out. It lies in the premise, which we will now notice :

In the fifth paragraph of the answer it is alleged that :

> "In this connection respondents aver *on information and belief* that said Huguley Manufacturing Company was never incorporated or organized in the State of Georgia, although, as they further aver, the solicitors who represented said corporation in said former litigation in this court were not aware it was not so incorporated and said fact was not discovered until after the filing of said suit in Alabama, and before the bringing of this suit."

The fact that Col. N. J. Hammond, the Solicitor who had prepared the pleadings and defended the Robinson suit, for the Huguley Manufacturing Company, of Georgia, under the employment of Jannopoulo, its president, (Rec. p. 26), had since died, and that the answer of the Alabama corporations to the so-called ancillary bill was prepared and filed by Messrs. King & Spalding, new counsel brought into the case, throws light upon the fact that the allegations of this clause are made upon information only. That information, which was received from the clerk of the Superior Court of Troup County, Georgia, during the preparation of the answer of the Alabama corporations to the so-called ancillary bill, was that the application for this charter for the Huguley Manufacturing Company, which had been filed in the said Superior Court by Col. N. J. Hammond in behalf of the individuals who had purchased certain rights under the State Court receiver's sale in Harris County, Georgia, (Rec. p. 15), had never, in fact, been granted or passed upon by said Superior Court.

Assuming that this information was correct, that clause of the answer was drafted to plead the supposed fact that the corporation sued in the Robinson bill as a Georgia corporation, and which defended only as such, existed only as a *de facto* corporation, and which had never been legally chartered or organized. We say now, that, since the decree in this cause, we have discovered that the information from the clerk was erroneous, and we make the statement not to take anything from it by way of the effect of the pleading but to set ourselves right as counsel. For the purpose of this hearing on bill and answer, the allegations of the answer will be taken as *true*, that (1) the complainants in the Alabama suit were chartered and organized under the laws of Alabama and were *never parties* to the Robinson bill; (2) the Huguley Manufacturing Company, the defendant to the Robinson bill, was never legally chartered or organized under the laws of Georgia. And we say that the two allegations are not inconsistent, and both can stand together, and that it does not follow that because the defendant Huguley Manufacturing Company sued, and a party to the Georgia bill as a citizen of Georgia, had not been chartered in Georgia or legally organized, that it must therefore be the Alabama corporation of the same name. The positive averment in the answer that the Huguley Manufacturing Company (the Alabama corporation), was not a party to the Robinson bill, on a hearing on bill and answer, cannot be destroyed by considering the other averment that the Huguley Manufacturing Company, of Georgia, party to the Robinson bill, was not chartered in Georgia, as a piece of evidence from which, in connection with other facts, the court may infer that the Alabama corporation was in fact a party to the Robinson bill. To justify that inference the admitted fact that the defendant Huguley Company was not chartered in Georgia, must be totally inconsistent with any other theory than that the Alabama corporation co-

plaintiff in the Alabama suit, was in fact the same as the Huguley Company, defendant to the Georgia suit. The theory that the Huguley Manufacturing Company was a *de facto* corporation, for which, as Col. N. J. Hammond testified in the Robinson suit (Rec. p. 26), he had (or thought he had) obtained a charter in Georgia, and which had (or thought it had) acquired rights in the property in question under a sale by a state court receiver in Harris County, Georgia (Rec. pp. 15, 118), to which state court proceeding the Alabama and Georgia Manufacturing Company (the *Alabama* corporation) *was not a party*, is one which fully satisfies this averment, without conflict with the controlling averment that the Alabama corporations were not parties to the Robinson bill.

There is nothing in the Robinson suit to show that the Huguley Manufacturing Company (the Alabama corporation), chartered in Alabama, Feb. 27, 1890 (Rec. pp. 531-6), held or claimed to hold, the rights set up by it in the Alabama suit, under the sale of the state court receiver in Harris County, Georgia, under which the Georgia Huguley Company claimed in the Robinson suit. Besides, nothing in the Robinson suit, by way of evidence or pleading, can be taken herein as binding upon the Huguley Manufacturing Company, of Alabama, unless it is shown that it was a party thereto, and as to that it has a right to have its day in court, examine witnesses and be heard.

Again the averment in the fifth paragraph of the answer that:

> "For further answer, respondents aver that this court was without jurisdiction of said original foreclosure cause for that the complainant therein (Robinson) and the Huguley Manufacturing Company were citizens of the same state, to-wit, the State of Alabama,"

is a statement in the answer in the nature of a demurrer

to the allegations of the ancillary bill, and the inference sought to be drawn from it by Mr. Brandeis, that it was intended to admit that the Huguley Manufacturing Company, the defendant to the Robinson bill, was the Alabama corporation of that name, complainant in the Alabama suit, is totally unwarranted. That possible inference had been negatived both in the first and ninth paragraphs of the answer. The allegation of the fifth paragraph was intended to reach the allegation of the ancillary bill, which had attached to it, as an exhibit, a copy of the Alabama charter and organization in Alabama of the Huguley Manufacturing Company, and which had averred (Rec. p. 473), as matter of law, that the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company (the *Alabama* corporations) were in law one and the same entities as the respective corporations of corresponding names, which the bill charged had been created and organized under the laws of Georgia. The allegation of the fifth paragraph of the answer meets that by saying, in effect, if that be true, then the court was without jurisdiction of the Robinson suit for want of diversity of citizenship, and the court will not now give you further relief on supplemental proceedings, on the equities of the old bill, to perfect *ineffective* decrees, after the want of jurisdiction has been made apparent by your own averment.

We insist, therefore, that none of the *arguendo* inferences can overcome the *positive averments* of the answer that the Alabama corporations, plaintiffs in the Alabama suit, were never parties to the Robinson suit.

II.

THE ALLEGATIONS OF THE ALABAMA BILL, AS TO THE PROPERTY AND EQUITABLE RIGHTS THEREIN SET UP BY THE ALABAMA CORPORATIONS, ARE TO BE GIVEN AS MUCH FORCE ON THIS HEARING (IN WHICH THE ALLEGATIONS OF THEIR ANSWER THAT THEY WERE NOT PARTIES TO THE ROBINSON SUIT IS ADMITTED) AS IF EACH ALLEGATION WERE REPEATED IN THE ANSWER TO THE SO-CALLED ANCILLARY BILL.

It is the inherent right of any person, to bring and maintain a suit, in any court of competent jurisdiction, against another, for a property right claimed on the face of such suit, without let or hindrance, unless the matters are *res judicata* between the parties, and this right is not dependent upon whether the claim is well founded in fact or upon the ultimate truth of the facts averred. The right to bring and maintain the suit rests upon the *claim* to the property right or other right asserted.

It follows, therefore, that when a bill is brought by a complainant, to enjoin some other suit, on the jurisdictional ground that the matters involved are *res judicata* between the parties, even if the injunction bill goes further and charges that the plaintiff in the suit, sought to be enjoined, is not in fact possessed of the property rights asserted, yet, if such plaintiff answers such injunction bill, alleging the bringing of his suit in good faith and denying that such plaintiff was a party to the suit upon which the charge of *res judicata* is made, and the case is heard on bill and answer, so that the complainant in the injunction suit thereby *admits* that the matter is *not* in fact *res judicata*

between the parties, the right to the injunction is destroyed. For the question at issue is, not whether the plaintiff enjoined actually has the property rights asserted by him in his suit, but whether the complainant in the injunction suit has a right to stop him from suing in a court of competent jurisdiction on his *claim* of right therein set up.

The allegation of the injunction bill that the plaintiff's asserted property rights do not in fact exist, may be taken as true for the purposes of the hearing for injunction, because the right of the plaintiff, who has not had his day in court, to select his own forum and prosecute his suit to judgment there, is not dependent upon the ultimate truth or validity of the claim asserted but upon his *right to assert the claim* by suit and have it determined in that forum. Were it otherwise, the defendant to any suit, without averment or proof that the matter about which he is sued had theretofore been adjudicated between the parties, could file a bill and enjoin the prosecution of the suit on the ground that the plaintiff's property rights set up were not well founded in fact instead of defending the suit.

To apply this principle to this case:

The so-called ancillary bill charges that the complainants in the Alabama suit had filed said bill in Alabama and were making the claims there set up, and attaches a copy of it as "Exhibit B", (Rec. pp. 478-486).

The answer of the Alabama corporations, admits the filing of the bill, and the assertion in the Alabama court by them of the claims therein set up, but they deny the jurisdiction of the Circuit Court in Georgia to enjoin them from prosecuting their suit, and it is distinctly averred (Rec. p. 509), "They further state that said suit is instituted *in good faith*."

When, therefore, the case is heard on the bill and answer, on which hearing it must be taken as *admitted* that the claim had never been litigated before between the parties, and that the Alabama corporations are prosecuting their claim

in good faith, the question at issue is not whether the claims as to property rights, asserted in the Alabama bill, are true, but the question at issue is simply whether—admitting that the Alabama corporations had never before had their day in court—the complainant in the suit filed in Georgia, can enjoin them from maintaining a suit in Alabama, in which they are claiming and asserting *bona fide* the rights of property which are claimed in the Alabama suit.

So that, for the purposes of the hearing, the admissions in the so-called ancillary bill, that the Alabama corporations are in good faith asserting the claims and property rights set up by them in the Alabama suit, makes the assertion of the claim stand for as much as if it were admitted that the claims were in fact well founded, since the right to sue in a court of competent jurisdiction is not dependent upon the ultimate truth of the claim, but upon the *right to assert* the claim.

The answer of the Alabama corporations was purposely limited to statements of fact in denial of the allegations of the so-called ancillary bill that the court had jurisdiction over their persons through their identity claimed with the defendants in the Robinson suit, and other jurisdictional allegations upon which the claim of ancillary jurisdiction rested ; and when those facts were *admitted*, by setting the case down on bill and answer, together with the fact that they were in good faith prosecuting the claims set up in their Alabama bill, the so-called ancillary bill necessarily had to go out of court for want of jurisdiction.

III.

MR. BRANDEIS' ATTACK ON RESPONDENTS' STATEMENT OF FACTS.

On page 8 of my principal brief, there are six statements of fact, which, it is there claimed, must be taken as *true* on this hearing.

On page 4 of his reply brief, Mr. Brandeis makes an attack upon the statements referred to, numbered (5) and (6).

The statement, numbered (5), is as follows:

> (5) "That it was the *Alabama* corporation and *not* the Georgia corporation of similar name, *which owned, and holds the title* to the lands in controversy in the Alabama suit."

Mr. Brandeis says, "this is a fact not alleged in the answer and therefore is not to be taken as true."

We submit that the allegation, in substance, is contained in the Alabama bill, and that on a bill to enjoin that suit, in which hearing it is *admitted as a fact*, that the matters alleged in the Alabama bill had never before been adjudicated or litigated by the parties, that it is the *claim* of right and title to the Alabama property, and the right to assert that claim by the Alabama suit, which is in issue, and not the ultimate validity of the claim, and there can be no doubt that both the ancillary *bill* and the *answer* to it assert that the *Alabama* corporations *do* assert title to the Alabama lands. The first paragraph of the Alabama bill aver:

> "That said last mentioned corporation (the Alabama and Georgia Manufacturing Company, the *Alabama* corporation) was duly organized under its said charter, and was afterwards *seized and possessed of the following lands*, to-wit, etc. (Rec. p. 486).

> "'Seized and possesed' are allegations of title."
> 25 A. & E. Ency. of Law, p. 253.

> "If the seizen of a party, at a given time, is proved or *admitted*, the legal presumption is that such seizen *continues*."

> Brown *v.* King, et al., 5 Metc. (Mass.), 173.

The Alabama bill, after averring that the Huguley Manufacturing Company of Alabama, co-complainant therein, was a corporation created and organized under the laws of Alabama, contains this further allegation, in paragraph seven :

> "Your orator, the Huguley Manufacturing Company, a corporation, avers that it purchased and acquired all the property hereinabove described subject to said mortgage, and is now the owner of the same, subject to said mortgage." (Rec. p. 492).

The contract, by which the Huguley Manufacturing Company acquired the equities claimed by it, in these Alabama properties, the mutual rights and liabilities which exist, or *may* exist, between the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, complainants in that suit, are not set out in that bill, nor was it necessary to set the same out for the purposes of that bill, because they both joined in asking the accounting and relief prayed.

The solicitors for the petitioner in certiorari contend that the allegation of the Alabama bill, as to the Huguley Manufacturing Company "purchasing and acquiring" the equity of redemption, is an admission that the Alabama and Georgia Manufacturing Company (the *Alabama* corporation) has parted with all interest in the property and rents and profits therefrom, to the Huguley Manufacturing Company of Alabama.

We submit that such a conclusion is far from being warranted by that allegation. The fact that it is setting up a claim in the Alabama bill to the rents and profits and to the property jointly with the Huguley Manufacturing Company is sufficient to negative that. The terms of the purchase, the time when made, and the rights retained in the

property or rents, by the Alabama and Georgia Manufacturing Company (the *ALABAMA* corporation), may be such as to make its rights and interest in the property paramount. This court is not trying the case made on the Alabama bill, but simply whether the Georgia Circuit Court ought to be allowed to enjoin the assertion of the rights claimed by the complainants in the Alabama suit.

Mr. Brandeis also (p. 4 of his reply brief), attacks the statement, clause (6), made by me in my principal brief (8), to the effect that it must be taken as true, on this hearing on bill and answer, that the Georgia confirmation and sale are not binding upon the Alabama corporations, and he says as to it: "This is a conclusion of law and must be disregarded."

We submit that every fact stated in clause (6) is specifically pleaded in the answer, and is therefore *admitted*, and that the conclusion stated arises, as matter of law, from the facts therein stated:

(*a*) The fact that the Alabama corporations were *not parties* to the Robinson suit, is averred in the answer. (Rec. pp. 505-8).

(*b*) The fact that *all* the lands in controversy are situate, in fact, *in Alabama*, is specifically averred in the answer. (Rec. p. 507).

(*c*) The fact that the sale and confirmation under the Robinson suit were made *after* the charter of the Alabama and Georgia Manufacturing Company (the *Georgia* corporation) had expired, and, therefore, *after* the said corporation was legally dead, is specifically averred in the answer. (Rec. p. 507).

(*d*) The fact that the sale of the Alabama lands under the foreclosure in the Robinson suit was made without advertisement otherwise than in Georgia, and was made in Harris County, Georgia, appears from the record in the Robinson suit itself. (Rec. pp. 380, 390).

(*e*) The fact that the decree of foreclosure, of March 30, 1895, was rendered against the Alabama and Georgia Manufacturing Company (the *Georgia* corporation) only, and the equity of redemption against *IT*, and those "claiming under or through *IT*," only, barred, appears from the decree itself. (Rec. p. 380).

(*f*) The fact that the Riverdale Cotton Mills received a deed from the *commissioner* appointed to sell, only, (without more), appears from the averments of its own bill (Rec. p. 477), also from the record in the Robinson suit showing that there was *no* decree whatever directing either the mortgagor or the trustees to make conveyance, the only direction being that the *commissioner*, appointed to sell the property in Georgia, should make conveyance. (Rec. pp. 395, 446).

We insist, therefore, that by setting down the case on bill and answer, and thereby *admitting* these facts to be *true*, the conclusion stated in clause (6), page 8, of Respondents' principal brief, is amply justified.

IV.

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY WAS A NECESSARY PARTY TO THE ROBINSON BILL, AT EVERY STAGE OF SAID SUIT.

The Alabama and Georgia Manufacturing Company, the *original mortgagor*, was a *necessary and indispensable* party to the Robinson foreclosure, at the time of passing upon its alleged liability for the attorneys' fees claimed, May 27, 1892, (Rec. pp. 3, 123-130), at the time of the sale, May 6, 1896, (Rec. p. 383), and at the time of the confirmations thereof, June 25, 1896, (Rec. p. 395), and October 15, 1898, (Rec. p. 446), and at the time, April 11, 1898, when the decree was made confirming the special master's report,

fixing the amount of the judgment for *deficiency* against it, and against the Huguley Manufacturing Company, parties defendant to that bill. (Rec. p. 428).

No valid judgment could be rendered affecting the rights of the *mortgagor*, affecting its relationship to the property and to the rents and profits of the same, in a proceeding to which it was *not* a party.

> Ayres *v.* Wiswall, 112 U. S. 187;
> Weldon *v.* Fritzlen, 123 Fed. 608-613;
> Worthington *v.* Lee, 2 Bland's Ch. Rep., 678.

> "The Georgia corporation was not a party *after* its death."
> Pendleton *v.* Russell, 144 U. S. 645.

It is contended, however, by the petitioner, that the death, March 21, 1896, of the Alabama and Georgia Manufacturing Company (the *Georgia* corporation), party defendant to the Robinson suit, cannot be taken advantage of in a collateral proceeding.

In the case at bar, however, the complainant in the ancillary suit has brought forward his decrees of confirmation, rendered against the dead corporation, and he relies upon that.

In a similar foreclosure suit in which there was a defect in confirmation of sale, and it was claimed that it could be taken advantage of only by a direct proceeding in the case, and not collaterally, the Supreme Court of the United States said:

> "It is a well settled rule of jurisprudence that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceeding."
> Williamson *v.* Berry, 8 How., 495.

If, however, the complainant in the so-called ancillary bill is to escape the consequences of not having the original mortgagor a party to the decree of confirmation, on the idea that the original mortgagor was not a necessary party, on what theory can he base his right to enjoin the original mortgagor from having its day in court? The original mortgagor is not a privy in estate to the assignee of the equity of redemption, and a judgment against the latter cannot deprive the former of having its day in court as to any rights it may have or claim.

V.

NO STATUTE OF LIMITATIONS OR BAR BY LACHES IN THIS CASE.

Under the first foreclosure and sale made in the Robinson suit, the purchase being made in the right of the bondholders, the Galeton Cotton Mills (itself chartered only under the laws of *Alabama*), went into possession of the Alabama properties. This sale was declared to be null and void and was set aside by the Circuit Court of Appeals, in 1893.

56 Fed., 690.

Nevertheless, the Galeton Cotton Mills stood in the position of mortgagees-in-possession, with the mortgage debt in default, as the mortgagees had the right to the possession and to continue to apply the rents and profits to the diminution of the mortgage debt until paid off, as held by the Circuit Court of Appeals.

94 Fed., 269.

Until the mortgagee had been in possession a sufficient time in which to pay off the debt, there was absolutely no

right in the mortgagor to demand possession of the property. During such period the statute of limitations does not run against the mortgagor.

> "After a mortgagee-in-possession has received payment of the debt, he really holds the property in trust for the mortgagor, and the statute of limitations does not run in his favor until by some further act he shows that his possession and claim have become adverse."
>
> 2 Jones on Mortgages, Sec. 1159.

The Galeton Cotton Mills, holding for the mortgagees, did not give up possession until after October 15, 1898, at which time the Riverdale Cotton Mills went into possession under the final decree of confirmation of the new sale (Rec. p. 445). The bill of the Alabama corporations was filed May 2, 1901 (Rec. p. 486). It follows, as is admitted in the first petition for *certiorari* filed by petitioner, that the suit filed for redemption was filed within less than two and a half years after the Riverdale Cotton Cotton Mills went into possession, and the right to bring the suit had accrued and it became apparent that the profits had paid off the mortgage debt.

V.

THE REVERSAL OF THE DECREE OF THE LOWER COURT BY THE CIRCUIT COURT OF APPEALS, —TERMS OF—NOTEWORTHY FEATURES.

On January 12, 1904, the Circuit Court of Appeals *reversed* the decree of the Circuit Court for the Northern District of Georgia, rendered September 29, 1902, and directed the *dismissal* of the so-called ancillary bill for want of jurisdiction, without prejudice to the right of the appellee (the petitioner in this court), to defend the suit against it

in the State Chancery Court of Alabama, or otherwise maintain in any court of competent jurisdiction, any rights which it may have against the Alabama corporations, the appellants there and respondents here.

As pointed out in my principal brief (at page 28), in reaching that conclusion, the Circuit Court of Appeals did not find it necessary to predicate its ruling upon but *two* out of the *many* points raised by the assignment of errors. It held :

> (*a*) "As the appellants (the *Alabama* corporations), could not have been parties defendant to the Robinson bill without ousting the jurisdiction of the court, and that court could not pass a decree against their property rights in Alabama, and (*b*) did not make any effectual decree conveying title out of them (if it could have done so), and they are not assignees or privy in estate to the defendants in that bill, and claim an independent source of title, the cases of French *v.* Hay, 22 Wallace, 250; Dietsch *v.* Huidekoper, 103 U. S. 494; and Root *v.* Woolworth, 150 U. S. 401, on which appellee relies, do not apply here."
>
> (Rec. p. 560.)

It is true that one of the judges of the Circuit Court of Appeals (Judge Pardee) dissented from the majority in the case at bar. He bases his views, it would appear, largely upon the idea that the bill filed by the Riverdale Cotton Mills comes within the definition of "an ancillary and supplemental bill," and that it was the duty of the Alabama corporations to have asserted their rights in the Robinson suit. Even Judge Pardee, while dissenting on the said particular point of "*practice*," as stated, in concluding his opinion, said :

> "There are some *other questions* raised in the assignments of error, the proper determination of

> which might require the *REVERSAL* of the decree below, and a *remand* for further proceedings, but as my brethren insist on a *dismissal* of the bill for *want of jurisdiction*, it is not necessary to consider *them*." (Rec. p. 564).

It is noteworthy that Judges McCormick and Shelby, who prepared the three former opinions of the Circuit Court of Appeals under the three several appeals taken there from the Circuit Court for the Northern District of Georgia, in the original Robinson suit, happen to be the same judges who joined in this last opinion of the Circuit Court of Appeals, in the injunction suit, in which it was held, as follows :

> "That the decree of the Circuit Court should be *reversed* and the cause remanded to that court with direction to *dismiss* the appellee's bill, without prejudice to the right of the appellee (petitioner here) to defend the suit against it in the *state* court, or to otherwise maintain, in any court of competent jurisdiction, any rights which it may have against the appellants. And it is so ordered." (Rec. p. 560).

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